IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.3024 OF 1993

Anantsa Eknathsa Malji, aged 50 years, Occ: business and agriculture, r/o Kadegaon, Tal. Khanapur, Dist: Sangli. .... Petitioner

- Versus -

1. Hindurao Haribhau Patole, since deceased, by heirs & representatives:

1A. Smt. Shahabai H. Patole, Age 55 years.

1B. Sampatrao H. Patole, Age 30 years.

1C. Ganpati H. Patole, Age 20 years.

1D. Sou. Mangal Shankar Madane, Age 22 years.

All residing at Kadegaon, Taluka Khanapur, District: Sangli.

2. Ashok Chandraji Kale

3. Bhau Anna Raskar

4. Sampatrao Anna Raskar

5. Shivaji Anna Raskar

6. Tanaji Anna Raskar

7. Vasant Anna Raskar

No.2 Medical practitioner and Nos.3 to 7 Occ: business and agriculture. All residing at Kadegaon, Taluka Khanapur, District: Sangli.

Shri M.L. Patil for the Petitioner.

Shri R.V. More for the Respondents.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: DECEMBER 05, 2005

ORAL JUDGMENT:

1. The petitioner challenges the order dated 21-7-1992, passed by the executing Court dismissing the regular darkhast proceedings No.51 of 1990. The darkhast application has been dismissed on the ground of wrong description of the property mentioned in the application for execution filed by the petitioner.

2. The petitioner had filed a suit being R.C.C. Suit No.211 of 1980 for specific performance of the agreement for sale in relation to a plot of land admeasuring 10 gunthas out of the land bearing gat No.1182/17. The description of the land stated to have been agreed to be purchased under the agreement as disclosed in the plaint was to the effect that it was an area of 10 gunthas out of the property bearing gat No.1182/17 and bounded on the eastern and northern side by the property of Hindurao Hariba Patole, the judgment-debtor No.1, on the southern side by the land out of gat No.1182/17 sole to one Sayaji Yadav Kadepurkar and on the western side Kadepur-Tadsar Road. The suit was decreed by the judgment and decree dated 17-9-1984. However, during the pendency of the suit, the judgment-debtor No.1 had executed three different sale deeds, namely - one dated 18-2-1982 in relation to a portion of land of the

property bearing gat No.1182/17 in favour of the respondent No.2 and two other sale deeds dated 1-10-1982 and 23-12-1982 in relation to some other area of the same property in favour of the respondent Nos.3 to 7. The appeal filed against the judgment of the trial Court was dismissed on 7-10-1989. The petitioner took out darkhast proceedings on 30-7-1990 which were sought to be resisted on behalf of the respondents. While initiating the darkhast proceedings, the petitioner also joined the respondent Nos.2 to 7 on the ground that some portion of the suit land was sold to the said respondents during the pendency of the suit. The executing Court, after hearing the parties, dismissed the application on the ground mentioned above. Hence, the present petition.

3. The learned Advocate appearing for the petitioner, relying upon the decision of the Apex Court in the matter of **Pratibha Singh v. Shanti Devi Prasad,** reported in AIR 2003 SC 643 submitted that the executing Court erred in dismissing the execution proceedings merely on the ground of incorrect description stated to have been given in the execution application in relation to the property in respect of which the execution is sought for. It was the duty of the executing Court to ascertain the exact identity of the property in respect of which the suit was decreed and thereafter pass an appropriate order for execution of the decree. The

learned Advocate appearing for the respondents, on the other hand, submitted that in the course of the execution proceedings the executing Court had appointed a Commissioner and he had submitted the report along with the plan of the property which evidently disclosed that the decree was granted in respect of the land other than the one sought to be claimed by the decree-holder. According to the learned Advocate, the description of the land which was identified by the judgment-debtor during the Commissioner's visit as being the subject-matter of the agreement between the petitioner and the judgment-debtor No.1 did not tally with the description of the land which was claimed to have been agreed to be purchased under the agreement in the plaint filed by the petitioner. Referring to the plan which discloses the identity of such land and the description given in the plaint which has been transcribed in the impugned order, the learned Advocate for the respondents submitted that those respondents will have no objection if the executing Court identifies the suit land to be the one in respect of which the decree has been passed and thereafter accordingly direct the respondent No.1 to execute the sale deed in respect thereof. He also submitted that the respondents have purchased their area openly and at no point of time there was any objection for any such purchase of the land by the respondents.

4. It is not in dispute that the petitioner had filed a

suit for specific performance of an agreement for sale in respect of the land which was described under the agreement in question. It is also not in dispute that the decree was accordingly passed and duly confirmed by the Appellate Court. The dispute regarding the identify of the property agreed to be purchased arose only at the time of execution of the decree. At the same time, it is also apparent from the records that the description of the property which was agreed to be purchased by the petitioner was not disclosed in the plaint in the manner it ought to have been disclosed in accordance with the rules of pleadings and to facilitate the Court to pass an appropriate decree. Nevertheless, the decree having been passed and having been duly confirmed by the Appellate Court, there is no justification to deny the fruits of the decree to the decree-holder. It is nobody's case that there was no agreement for sale of land nor it is the case of any of the parties to the proceedings that the respondent No.1 never agreed to sell any part of the land bearing gat No.1182/17. In such circumstances, the learned Advocate for the petitioner is justified in placing reliance in the decision of the Apex Court in the matter of **Pratibha Singh** (supra). The Apex Court therein had clearly ruled that

> "When the suit as to immovable property has been decreed and the property is not

definitely identified, the defect in the Court record caused by overlooking of provisions contained in O.7, R.3 and O.20, R.3 of the C.P.C. is capable of being cured. After all a successful plaintiff should not be deprived of the fruits of decree. Resort can be had to S.152 or S.47 of the C.P.C. depending on the facts and circumstances of each case - which of the two provisions would be more appropriate, just and convenient to invoke. Being an inadvertent error, not affecting the merits of the case, it may be corrected under S.152 of the C.P.C. by the Court which passed the decree by supplying the omission. Alternatively, the exact description of decretal property may be ascertained by the Executing Court as a question relating to execution, discharge or satisfaction of decree within the meaning of S.47, C.P.C. A decree of a competent Court should not, as far as practicable, be allowed to be defeated on account of an accidental slip or omission."

5. It is also to be noted that in the case in hand the

Commissioner who was appointed in the matter had drawn a plan disclosing the identity of the various plots as claimed by the parties. Accordingly, the area which is delineated by the letters "B", "F", "Q-D" is shown to have been claimed by the respondents as the land which was the subject-matter of the agreement between the petitioner and the respondent No.1 whereas the petitioner claims to have agreed to purchase the land delineated on the plan with the letters "E", "J", "L-R". The description of the land which is the subject-matter of the agreement and as described in the plaint reveals that such plot is bounded on the eastern and northern side by the property of Hindurao Patole, the judgment-debtor No.1, on the southern side by the land out of gat No.1182/17 sold to one Sayaji Yadav Kadepurkar and on the western side by a road going from Kadepur to Tadsar. If one compares this description with the plan drawn by the Commissioner and a copy of which is to be found at page 28 of the petition, it discloses that the area which is claimed by the petitioner as being the one which was the subject-matter of the agreement does not seem to be bounded on the northern side by the property of the judgment-debtor No.1 but is bounded by a canal. However, the area which is claimed by the respondents as being the subject-matter of such an agreement between the petitioner and the respondent No.1, as shown in the plan of the Commissioner, appears to be bounded on the north

by the property of the original judgment-debtor No.1 and during the pendency of the suit having been sold to different persons including the respondent Nos.3 to 7, as also a portion of the eastern boundary to such plot being bounded by the residential house of the respondent No.1. Both the plots, the one claimed by the petitioner and the one claimed by the respondents, as above, are bounded by the property bearing gat No.1182/17 on the southern side, as also bounded by the road on the western side. At the same time, it is also undisputed fact that the petitioner had not taken care at the time of filing of the suit to describe the exact location of the area agreed to be purchased in the property bearing gat No.1182/17 when, admittedly, the agreement was for the purchase of a part of such property and not for the entire property. However, as already observed above, once the petitioner having been armed with successful decree for specific performance of the agreement, duly confirmed by the Appellate Court, it would not be proper for the executing Court to reject the application for execution merely on the ground of incorrect or incomplete description of the plot. In the facts and the circumstances, therefore, it will be in the fitness of the case to set aside the impugned order and to remand the matter to the executing Court to appoint a Commissioner to identify the exact area which was the subject-matter of the decree and to demarcate the same at the site and thereafter to direct the judgment-debtor

No.1 to execute the sale deed accordingly in respect of such area. Undisputedly, the Commissioner will have to bear in mind the description of the plot given in the plaint and the report prepared by the earlier Commissioner along with his plan in the matter. With the above directions, therefore, the impugned order is hereby quashed and the rule is made absolute in above terms with no order as to costs.